

TERESA N. THOMAS,)
)
Plaintiff,)
)
v.) C.A. No. 2008-10-102
)
MICHAEL O. THOMAS,)
)
Defendant.)

MEMORANDUM OPINION AND ORDER

Michael P. Morton, P.A., 1203 North Orange Street, Wilmington, Delaware 19801,
Attorney for Defendant.

Plaintiff Teresa N. Thomas and Defendant Michael O. Thomas jointly owned a property located at 201 W. Grant Ave., New Castle, DE 19720 (“Grant Avenue Property”). Plaintiff and Defendant purchased the Grant Avenue Property together in 1998 and later married. The marriage ended in divorce in 2005 and Defendant moved out of the Grant Avenue Property. Plaintiff alleges that after the divorce she and Defendant made a verbal agreement for Plaintiff to refinance the Grant Avenue Property in her name only and for Defendant to convey his interest

in the Grant Avenue Property to Plaintiff. The new mortgage also refinanced personal debts previously accumulated by the parties individually. Plaintiff claims that Defendant agreed to repay his portion of the personal debts directly to Plaintiff, although the new mortgage would not be in his name. Defendant claims the agreement consisted of Defendant transferring his equity in the Grant Avenue Property to Plaintiff in exchange for Plaintiff's assumption of the full amount of liabilities owed by each of the parties. Defendant denies that there was any agreement to repay his personal debts.

This dispute is the focus of the lawsuit filed in this Court. Plaintiff is seeking \$23,352.13 as a result of Defendant's alleged breach of contract. At the conclusion of the trial, counsel submitted written arguments. Based upon the record and for the reasons stated in this Memorandum Opinion and Order, the Court finds in favor of Defendant.

THE FACTS¹

On or about July 22, 1998, prior to the parties' marriage, Plaintiff and Defendant purchased the Grant Avenue Property for \$100,000. The purchase was financed by a mortgage from Chase Mortgage Company for which they were jointly and severally liable ("Chase I"). On April 17, 1999, the parties were married. On April 3, 2001, Defendant, individually, obtained a loan from

¹ Unless otherwise noted, there is no dispute regarding the facts.

Household Finance Corporation in the amount of \$15,789.20 to consolidate his personal credit card debts (“Household I”). Plaintiff had no liability under Household I.

The parties were separated on April 25, 2004. Defendant voluntarily moved out of the Grant Avenue Property, and moved in with his parents. Defendant kept a key to the Grant Avenue Property.

The parties began marriage counseling in June 2004 in an attempt to reconcile. Sometime thereafter, Defendant informed Plaintiff that he was having a difficult time making payments on Household I, and his share of Chase I. Defendant requested that Plaintiff refinance Chase I at a lower interest rate. Defendant also requested Plaintiff refinance Household I to include other personal debts. The refinancing of Chase I took place on September 27, 2004 resulting in a loan from Chase Mortgage Company in the amount of \$96,000 for which both parties were jointly and severally liable (“Chase II”). On October 25, 2004, the parties refinanced Household I and obtained a loan from Household Finance Corporation in the amount of \$43,117.75 (“Household II”) for which they were jointly and severally liable. Household II extinguished Defendant’s individual debt obligations under Household I but the parties agreed he would continue to be responsible for that portion of Household II that refinanced his individual debt from Household I.

At the time of closing on Household II, the parties agreed that Plaintiff would maintain a spreadsheet detailing the individual debts of the parties which had been consolidated in Household II (“Individual Debt Spreadsheet”) and which reflected payments made by Defendant with respect to his portion of Household II. Based on the apportionment of their debts that were refinanced by Household II, Defendant was individually responsible for \$27,981.56 and Plaintiff was individually responsible for \$15,136.19.

Following the closing on Household II, Defendant began making monthly payments of \$600 to a joint account to fund his share of Household II. The monthly payments of \$600 exceeded what Defendant was responsible to pay under Household II. Plaintiff credited the excess monies paid by Defendant by reducing his remaining debt on Household II.

In the meantime, despite the parties’ attempts at reconciliation, the parties ended marriage counseling on or around November 2, 2004 and divorced on March 16, 2005.² In late August or early September of 2005, Defendant told Plaintiff that his debt obligations under Chase II and Household II reflected poorly on his credit report and were preventing him from securing an apartment or purchasing a home. Defendant proposed selling the Grant Avenue Property, and using the proceeds from the sale to pay off the outstanding loans. Both parties are in agreement that

² The Family Court did not adjudicate property division or other financial matters.

Plaintiff would not agree to sell the Grant Avenue Property and that alternative options, such as bringing in a roommate or finding alternate living arrangements, were discussed to no avail.

Plaintiff testified that Defendant was willing to give up his interest in the Grant Avenue Property if Plaintiff agreed to obtain a new mortgage solely in her name to pay off Chase II and Household II. According to Plaintiff, she refused to take this approach because it would not be fair for her to take full responsibility for Defendant's obligations under Household II in exchange for his interest in the equity of the Grant Avenue Property. Plaintiff claims that Defendant made a verbal promise to pay Plaintiff for his remaining portion of Household II at the time of the refinancing, as long as Chase II and Household II were no longer reflected on his credit report. Plaintiff stated that she was amenable to this arrangement since Defendant had always honored his promise to pay his portion of the Household II debt. Plaintiff understood that Defendant agreed to make semi-monthly payments of \$250 commencing on October 31, 2005, the date of his next paycheck.

Defendant contends the verbal agreement provided that Plaintiff would assume all debt secured by the Grant Avenue Property, specifically Chase II and Household II, in exchange for sole ownership of and title to the Grant Avenue Property. According to Defendant, the agreement was that he would transfer his

interest in the Grant Avenue Property to Plaintiff in exchange for her assumption of all debts. He maintained that his relief from debt in exchange for his equity in the Grant Avenue Property was fair to both sides.

On or about September 6, 2005, Plaintiff contacted Chase Mortgage Company to begin the process of refinancing the Grant Avenue Property and obtaining title solely in her name. The Individual Debt Spreadsheet reflects that Defendant's final payment to Plaintiff was made on October 14, 2005. According to the Individual Debt Spreadsheet, Defendant was responsible for \$23,352.13 of the Household II debt when he made his last payment to Plaintiff.

On October 15, 2005, Defendant appeared at settlement and signed the deed transferring the Grant Avenue Property to Plaintiff. At that same settlement, Plaintiff refinanced Chase II and Household II, combining them into a larger Chase Mortgage Company obligation ("Chase III") in the amount of \$141,925 secured by the Grant Avenue Property. It was agreed that the value of the Grant Avenue Property at the time of the Chase III refinancing was \$160,000.

Plaintiff testified that after the closing she and Defendant went out to lunch. According to Plaintiff, while they were having lunch, consistent with their earlier verbal agreement, she provided Defendant with a copy of the Individual Debt Spreadsheet showing Defendant remained obligated to her in the amount of \$23,352.13 – which was his personal debt remaining under Household II at the

time it was refinanced by Chase III. Plaintiff testified that, based on his request, she also provided Defendant with a voided check so that he could, consistent with his earlier practice, have monies transferred electronically to Plaintiff's account to pay his portion of the Household II obligation.

Defendant testified that he did not recall going to lunch with Plaintiff following the closing on the Property; nor did he recall receiving a copy of the Individual Debt Spreadsheet at that time. Defendant denied ever receiving a voided check from Plaintiff.

When she did not receive a payment from Defendant by November 15, 2005, Plaintiff called Defendant on numerous occasions to discuss why payments had not been made. It is undisputed that Defendant's response to Plaintiff's phone calls was invariably, "Can we talk about this later?" Plaintiff also alleges that on January 11, 2006, she sent Defendant an email which stated in part, "... you owe me a SIGNIFICANT amount of money, and I would like to discuss repayment."³ Defendant denied that he ever received the January 11, 2006 email message. Plaintiff conceded that she did not receive a response to her January 11, 2006 email message.

³ Plaintiff's Exhibit No. 7 is a copy of the purported email from Plaintiff to Defendant dated January 11, 2006 and was admitted into evidence over the Defendant's objection.

A few months later, having received no response to her January 11, 2006 email, Plaintiff contacted Defendant and inquired whether it would be necessary to contact an attorney to collect the payments that were due. Plaintiff testified that it was during this conversation that Defendant, for the first time, stated that he did not owe her anything. Defendant claims that he had unequivocally informed Plaintiff on more than one occasion that no monies were due and owing.

As noted earlier, it was agreed that the value of the Grant Avenue Property at the time of the Chase III refinancing was approximately \$160,000. Also, it is not disputed that at the time Household II was refinanced by Chase III, Defendant was responsible for \$23,352.13 of the Household II debt. Furthermore, the parties were equally responsible for the Chase II debt, with a balance owed of almost \$96,000, which was also refinanced by Chase III. Therefore, at the time of closing on the Chase III loan, Defendant transferred \$32,000 in equity to Plaintiff, who in turn personally became legally responsible to repay \$23,352.13 of the Household II debt previously owed by Defendant.

Defendant contends that Plaintiff received \$8,647 in additional equity in the Grant Avenue Property after deducting the amount owed by Defendant on Household II. Defendant suggests he was willing to take this “loss” to be relieved of his liability on the debts.

ANALYSIS

Both parties agree there was no written contract. Therefore the question is whether the acts and writings of the parties are sufficient for the Court to find the existence of a verbal contract. Plaintiff bears the burden of proving her claim by a preponderance of the evidence.⁴ If there was a verbal contract, the next question would be whether it is enforceable. Because the Court finds Plaintiff has not met her burden of proof to show by a preponderance of the evidence that a contract existed, the Court does not address whether the alleged contract is enforceable.

Plaintiff alleges that the parties entered into a contract whereby Defendant would transfer all of his interest in the Grant Avenue Property to Plaintiff and pay the existing debt under Household II to her instead of to Household Finance Corporation in return for her promise to refinance the Household II and Chase II loan obligations. Plaintiff claims that Defendant breached said contract by failing to make payments on the Household II obligation following the refinancing. Defendant asserts that (1) there was no meeting of the minds on all material terms and, therefore, there was no contract; (2) if a verbal contract exists, that contract would not be enforceable because of the Statute of Frauds; and (3) the claim was discharged on Accord and Satisfaction.

⁴ *Interim Healthcare, Inc. v. Spherion Corp.*, 884 A.2d 513, 548 (Del.Super.2005).

It is the duty of the Court to weigh the evidence that is presented. A preponderance of the evidence exists when the body of evidence supporting a conclusion is greater than the body of evidence that does not support that conclusion.⁵ Under Delaware law, the elements of a breach of contract claim are: (1) the existence of a contract; (2) a breach of an obligation imposed by that contract; and (3) resulting damages.⁶ Thus, in order for Plaintiff to recover, the first question is whether Plaintiff established by a preponderance of evidence there was a contract between herself and Defendant.

A contract has been defined under Delaware law as an agreement upon sufficient consideration to do or not to do a particular thing.⁷ The elements necessary to create a contract include mutual assent to the terms of the agreement, also known as the meeting of the minds, and the existence of consideration.⁸ Mutual assent requires an offer and an acceptance wherein “all the essential terms of the proposal must have been reasonably certain and definite.”⁹ Thus, if any

⁵ *Reynolds v. Reynolds*, 237 A.2d 708, 711 (Del.1967).

⁶ *Gutridge v. Iffland*, 889 A.2d 283 (Del.2005)(citing *VLIW Technology, LLC v. Hewlett-Packard Company*, 840 A.2d 606, *612 (Del.2003)).

⁷ *Rash v. Equitable Trust Co.*, 159 A. 839, 840 (Del.Super.1931).

⁸ *Quinones v. Access Labor*, 2008 WL 2410170 at *5 (Del.Super.)(quoting *Ramone v. Lang*, 2006 WL 905347, * 10 (Del.Ch., April 03, 2006) (citing *Wood v. State*, 815 A.2d 350, 2003 WL 168544 at *2 (Del., January 27, 2003) (citing Restatement (Second) of Contracts § 18 (1981))).

⁹ *Gleason v. Ney*, 1981 WL 88231 at *1 (Del.Ch.).

portion of the proposed terms is not settled there is no agreement.¹⁰ Where there is no mutual assent or meeting of the minds, there is no enforceable contract in Delaware.¹¹

In this case, it is clear, even when all the evidence is construed most favorably to Plaintiff, that there was never a mutual assent or a meeting of the minds that Defendant would continue to be responsible for his portion of the Household II debt. There is a lack of documentary evidence that would demonstrate that Plaintiff and Defendant reached an understanding in regards to the financial terms of the agreement. The witnesses' testimony demonstrates that, at most, there was some discussion but no agreement was reached.

To prove that a contract existed, Plaintiff offered her own testimony as well as two documents: (i) an email dated January 11, 2006 which she claims to have sent to Defendant; and (ii) the Individual Debt Spreadsheet she prepared. Defendant denies ever receiving the email, and Plaintiff candidly admits that there was no response. Under the circumstances, the Court does not give this document any weight given the absence of evidence that it was received by Defendant. The Individual Debt Spreadsheet meticulously tracks and records the parties' payments and liabilities under Household II. Plaintiff clearly took great pains to track every

¹⁰ *Id.*

¹¹ *Rodgers v. Erickson Air-Crane Co. L.L.C.*, 2000 WL 1211157 at *6 (Del.Super.).

payment from Defendant and credited the money paid by deducting the amount from his remaining debt under Household II. However, like the January 6 email, this document also fails to address the alleged promises made by each of the parties, and is likewise not specific enough to form the basis of a contract. Therefore, considering all the evidence presented at trial, Plaintiff has not established mutual assent by a preponderance of the evidence.

Moreover, the Court's finding that there was no contract is supported by common sense. Under the circumstances presented, the net result of the Chase III refinancing resulted in Plaintiff having \$8,647.87 of additional equity in the Grant Avenue Property after deducting the amount owed by Defendant on Household II. The agreement alleged by Plaintiff would have left Defendant with an obligation to repay \$23,352.13 and he would have forfeited \$32,000 in equity in the Grant Avenue Property. It is not credible that Defendant would have given up his equity without Plaintiff agreeing to assume the liability in Household II. The credible evidence supports Defendant's position that he never agreed to continue to be responsible for his debt under Household II after the Grant Avenue Property was refinanced and owned solely by Plaintiff. The Court concludes, based on the evidence presented that Defendant's testimony regarding the disputed agreement is more credible than Plaintiff's.

CONCLUSION

Plaintiff has not proven by a preponderance of the evidence that an enforceable contract exists. Specifically, Plaintiff failed to establish by a preponderance of the evidence that the parties had a meeting of the minds regarding Defendant's repayment of his debts owed on Household II. Plaintiff has no basis for recovery under a claim for breach of contract because she did not prove that a contract existed. Therefore, **JUDGMENT IS ENTERED IN FAVOR OF DEFENDANT.**

IT IS SO ORDERED.

Andrea L. Rocanelli

The Honorable Andrea L. Rocanelli